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In the Supreme Court of the United States

OCTOBER TERM, 1942

No. 634

J. WANROY GARROW, MARCITA D. GARROW AND VIRGINIA BULLOCK-WILLIS, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The district court did not write an opinion. The opinion of the circuit court of appeals (R. 101–104) is not yet reported.

JURISDICTION

The judgment of the circuit court of appeals was entered November 25, 1942 (R. 104). The petition for a writ of certiorari was filed January 7, 1943. The jurisdiction of this Court is invoked under section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether in a condemnation proceeding a district court may enter a judgment awarding as just compensation an amount less than the estimated compensation deposited by the United States pursuant to the Declaration of Taking Act.

STATUTE INVOLVED

The relevant portions of the Declaration of Taking Act, 46 Stat. 1421–1422, 40 U. S. C., sec. 258a, are set forth in the Appendix, pp. 6, *et seq., infra.*

STATEMENT

On March 19, 1940, the United States instituted proceedings to condemn land as a site for the Southeast Air Depot (R. 8–16). Included were 32.543 acres, described as parcel 52 and owned by Virginia Bullock-Willis (R. 11, 13–15) and 33.34 acres, described as parcel 53 and owned by J. W. and M. D. Garrow (R. 11, 15–16). At the same time, the United States filed a declaration of taking and deposited in the registry of the district court the sum of $9,900.00 as estimated just compensation for parcel 52 and $13,100.00 as estimated compensation for parcel 53 (R. 18).

The amounts deposited were considered insufficient by petitioners (R. 29–36) and the issue of just compensation was submitted to commissioners (R. 36–41). Both sides were dissatisfied with the commissioners' report and the question was referred to a jury. At the trial counsel for both parties agreed that the estimates of just compen-

sation set forth in the declaration of taking were not admissible in evidence (R. 6). In its charge submitting the issue of value to the jury the district court stated that the United States was not bound by the appraisal made by its agents in making the deposit with the declaration of taking (R. 62). Petitioners' counsel expressed satisfaction with the charge (R. 66).

The jury found parcel 52 to be worth $8,314.73 (R. 69–70) and parcel 53 to be worth $8,518.37 (R. 70–71). Petitioners then moved that, notwithstanding the verdicts, judgments should be entered for $9,900.00 and $13,100.00, the amounts stated in the declaration of taking (R. 71, 72). The ground of these motions was that the deposit constituted an admission of value by the United States and that the United States was "estopped from claiming or the jury from finding a verdict for a lesser sum." The motions were denied (R. 73–74) and judgments were entered on the verdicts (R. 78–81, 81–83).[1]

[1] Both the Garrows and Mrs. Bullock-Willis owned other tracts condemned in this proceeding. They are important here only to explain the judgments. Thus, the Government had deposited $20,500.00 for the three other tracts owned by Mrs. Willis and, as the awards on those tracts totalled $25,089.33, judgment was awarded against the United States for the $4,589.33 deficiency. Deposits for other lands owned by the Garrows totalled $24,750.00. The awards on these tracts aggregated $33,220.10; hence a deficiency judgment was given against the United States for $8,470.10. The Government was then given a credit for the $4,581.63 by which the deposit on tract 53 exceeded the award.

On appeal the circuit court of appeals held that the estimate of just compensation made pursuant to the Declaration of Taking Act was not binding upon the United States. Accordingly, it affirmed the judgment of the district court.

ARGUMENT

The only question presented by petitioners has just been settled by this Court in *United States* v. *Miller*, No. 78, decided January 4, 1943.[2] In that case the landowners had argued that the deposit of estimated just compensation became theirs when the court permitted it to be withdrawn pending the trial. This Court rejected that contention on the ground that the deposit and its payment to the landowner is "a provisional and not a final settlement with the owner" (p. 10), citing with approval the decision of the court below in the instant case. The Court held, accordingly, that the United States could recover from landowners any amounts paid to them from the deposit in excess of the jury's verdict. It follows *a fortiori* that the landowners were not entitled to judgments for more than the amounts of the verdicts.

[2] The petition for certiorari in the instant case apparently was prepared before the opinion was handed down in the *Miller* case. It was filed three days later.

CONCLUSION

It is submitted, therefore, that the petition for a writ of certiorari should be denied.

Respectfully,

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JANUARY 1943.